APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,091	10/18/2000	Corey Young	2222.0420001	3750

7590   08/09/2004

Steven M. Hoffberg, Esq.
MILDE, HOFFBERG & MACKLIN, LLP
10 Bank Street - Suite 460
White Plains, NY 10606

EXAMINER
PHAN, TAM T

ART UNIT	PAPER NUMBER
2144	

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/691,091	YOUNG ET AL.
	Examiner	Art Unit
	Tam (Jenny) Phan	2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _26 May 2004_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-30_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-30_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _19 October 2000_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some *   c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Amendment received on 05/26/2004 has been entered into record.

Claims 1-30 remain pending.

Continued Examination Under 37 CFR 1.114

2.   A request for continued examination under 37 CFR 1.114, including the

fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114,

and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the

previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 05/26/2004 has been entered.

Priority

3.   This application claims benefit of the provisional application 60/167,551

(10/18/1999).

4.   The effective filing date for the subject matter defined in the pending

claims which has support in parent 60/167,551 in this application is 10/18/1999.

Any new subject mater defined in the claims not previously disclosed in parent

60/167,551, is entitled to the effective filing date of 10/18/2000.

Drawings

5.   This application has been filed with informal drawings, which are

acceptable for examination purposes only. Formal drawings will be required

when the application is allowed.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

7.   Claims 1, 3-4, and 6 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Van Ryzin et al. (U.S. Patent Number 6,446,080), hereinafter

referred to as Ryzin, in view of Mogul (U.S. Patent Number 5,802,292).

8.   Regarding claim 1, Ryzin disclosed a method for reducing latency in

sequential record browser, comprising the steps of: defining a sequential list of

records [tracks] (Figures 6-7b, column 4 lines 57-64, column 5 lines 19-33);

selecting a record from the list for review [play] (Figures 2 & 8, column 6 lines 10-

21); downloading the selected, and records ordered sequentially thereafter until

interrupted, downloaded records being available for browsing absent the retrieval

delay (Figures 2 & 8, column 6 lines 10-21); interrupting the download by

selecting a non-sequential record from the list (column 3 lines 6-10, column 5 line

59-column 6 line 4, column 6 line 58-65).

9.   Ryzin taught the invention substantially as claimed. However, in the step

of defining a sequential list of records, Ryzin did not expressly teach the records

having retrieval latency and in the step of interrupting, Ryzin did not expressly

teach downloading the non-sequential record and records sequentially thereafter

until interrupted.

10.   Ryzin suggested exploration of art and/or provided a reason to modify the method to include the retrieval latency and the downloading non-sequential record feature (column 4 lines 57-67, column 5 line 59-column 6 line 4).

11.   Mogul disclosed records [objectives] having retrieval latency and when the download [prefetch] process is interrupted, the non-sequential record [users' explicit request] is downloaded along with the records sequentially thereafter (column 4 lines 13-24].

12.   It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Ryzin with the teachings of Mogul to include the retrieval latency and the downloading non-sequential record features in order to speed up access to a resource that is selected by a user (Mogul, column 1 lines 33-39, lines 60-65) since users in general do not like to wait for their results when accessing the Internet. Users that are forced to wait would typically avoid using resources that take a long time to access (Mogul, column 1 lines 33-39).

13.   Regarding claim 3, Ryzin disclosed a method wherein said method is executed by a browser application (column 4 lines 57-64).

14.   Regarding claim 4, Ryzin disclosed a method wherein said method if executed by a browser plug-in or extension (column 4 lines 61-67 and column 5 lines 1-4).

15.   Regarding claim 6, Mogul and Ryzin combined disclose a method further comprising the steps of communicating through a network to a server hosting the records; and presenting a list of record to a user, prior to receiving a selection of

a record from the user (Ryzin, Figures 2, 7a-7b, 9, 10, column 5 lines 45-49;

Mogul, Figures 1-2, column 2 lines 22-44).

16.   Since all the limitations of the claimed invention were disclosed by the

combination of Ryzin and Mogul, claims 1, 3-4, and 6 are rejected.

17.   Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Van Ryzin et al. (U.S. Patent Number 6,446,080), hereinafter referred to as

Ryzin, as applied above in view of Mogul (U.S. Patent Number 5,802,292), and

further in view of Schulhof et al. (U.S. Patent Number 5,557,541), hereinafter

referred as Schulhof.

18.   Regarding claim 5, Regarding claim 1, Ryzin disclosed a method for

reducing latency in sequential record browser, comprising the steps of: defining a

sequential list of records [tracks] (Figures 6-7b, column 4 lines 57-64, column 5

lines 19-33); selecting a record from the list for review [play] (Figures 2 & 8,

column 6 lines 10-21); downloading the selected, and records ordered

sequentially thereafter until interrupted, downloaded records being available for

browsing absent the retrieval delay (Figures 2 & 8, column 6 lines 10-21);

interrupting the download by selecting a non-sequential record from the list

(column 3 lines 6-10, column 5 line 59-column 6 line 4, column 6 line 58-65).

Mogul disclosed records [objectives] having retrieval latency and when the

download [prefetch] process is interrupted, the non-sequential record [users'

explicit request] is downloaded along with the records sequentially thereafter

(column 4 lines 13-24].

19.   The combination of Ryzin and Mogul taught the invention substantially as claimed. However, the combination of Ryzin and Mogul did not disclose the step of cost accounting for downloading of each record. However, Schulhof disclosed a distribution system that enables a subscriber to select desired programs [download of each record] and to be charged for the service [cost accounting of downloading records] (column 6 lines 33-40).

20.   Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to employ the use of cost accounting to charge for downloading materials in order to prevent copyright infringement should materials relate to multimedia, literature, etc. Billing the subscribers for each record of downloaded materials will prevent non-subscribers from abusing the network bandwidth.

21.   Regarding claim 7, Schulhof disclosed the steps of: accounting for a downloaded record; and limiting said downloading based on predetermined parameter (column 6 lines 33-40, column 8 lines 4-14, and column 9 lines 30-35).

22.   Since all the limitations of the claimed invention were disclosed by the combination of Ryzin, Mogul, and Schulhof, claims 5 and 7 are rejected.

23.   Claims 2,15, and 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogul (U.S. Patent Number 5,802,292), in view of Guedalia et al. (U.S. Patent Number 6,535,878), hereinafter referred to as Guedalia.

24.   Regarding claim 2, Mogul disclosed a method for prequeuing of files predicted to be desired by a user, comprising: defining a restrictive criteria to

select a list of files (Abstract, Figure 2, column 2 lines 22-44); transferring files on

the list into a local cache, in anticipation of a user selection thereof, files already

transferred to the local cached having a shorter delay for review than those which

have not been previously transferred to the local cache, an order of file transfer

being responsive to the prediction of user review requirements, the prediction

being responsive to any change in a user deviation from the predicted order

(Title, Abstract, Figures 1-2, column 1 lines 59-65, column 2 lines 7-16, column 4

lines 5-24); receiving a starting point within the list of files, for file review, from the

user, such that predicted latencies for sequential file review from any starting

point are optimized (Abstract, Figure 2, column 3 lines 54-57, column 4 lines 5-

24, lines 38-52).

25.   Mogul taught the invention substantially as claimed. However, Mogul did

not expressly teach a step of *automatically transferring files* on the list into a local

cache.

26.   Mogul suggested exploration of art and/or provided a reason to modify the

method with the automatic transferring feature (column1 lines 60-65).

27.   Guedalia disclosed a step of automatically transferring files on the list to

the client storage media (Abstract, Figures 1-2, column 8 lines 23-33, column 9

lines 19-29).

28.   It would have been obvious to one of ordinary skill in the art at the time of

the invention was made to modify the method of Mogul with the teachings of

Guedalia to include the automatic transferring feature in order to reduce the

actual retrieval latency (Mogul, column 1 lines 60-65) since automatic transferring

of predicted object would be able to make the latency appear zero when a user

request the object (Mogul, column 1 lines 60-65).

29.   Regarding claim 15, the browser corresponds to the method of claim 1,

and thus is rejected using the same rationale.

30.   Regarding claim 21, Mogul and Guedalia combined disclosed a method

for transferring files for sequential review, comprising: accessing a restrictive

criteria to select a list of files; determining an order of file transfer based on a sort

criterion; queuing the files on the list according to the order of file transfer; and

transferring automatically the queued files in a sequential order into a local cache

for sequential review at a client (Mogul, (Title, Abstract, Figures 1-2, column 1

lines 59-65, column 2 lines 22-44, column 4 lines 5-24, lines 37-52; Guedalia,

Abstract, Figures 1-2, column 8 lines 23-33, column 9 lines 19-29).

31.   Regarding claim 22, Mogul disclosed a method wherein said transferring

comprises receiving a user-specified quantity [criteria] of files to be transferred;

and transferring the user-specified quantity [criteria] of files into the local cache

(column 4 lines 5-13).

32.   Regarding claim 23, Mogul disclosed a method further comprising:

receiving a format change during said transferring; and transferring subsequent

files on the list according to the format change (column 2 lines 23-44).

33.   Regarding claim 24, Mogul disclosed a method further comprising:

receiving a revised sort criterion from the client; determining a revised order of

file transfer based on the revised sort criterion; and queuing the files on the list

according to the revised order of file transfer (Abstract, column 4 lines 5-24, lines 37-52).

34.   Regarding claim 25, Mogul disclosed a method further comprising: sending the list to the client; and receiving, from the client, a first selection of a file from the list, wherein said queuing comprises queuing the first selection as the first file and queuing subsequent files according to the order of file transfer (Abstract, column 4 lines 5-24, lines 37-52).

35.   Regarding claim 26, Guedalia disclosed a method further comprising: receiving a request to cancel an item from the list; and removing the item from at least one of the list or the queued files (column 10 lines 36-48).

36.   Regarding claim 27, Mogul disclosed a method further comprising receiving a non-sequential request for an item on the list, wherein said queuing comprises queuing the requested item as the first file and queuing subsequent files according to the order of file transfer (column 4 lines 5-24, lines 37-52).

37.   Regarding claim 28, Guedalia disclosed a method further comprising: receiving a user-specified image resolution format or a user-specified file format for the files; and processing the files to comply with the image resolution format or the file format prior to executing said transferring (column 5 lines 21-33, lines 56-67, column 6 lines 4-17).

38.   Regarding claim 29, Guedalia disclosed a method further comprising receiving a user-defined parameter to establish a size of a queue for holding the queued files (column 10 lines 24-35, column 20 lines 8-19).

39.   Regarding claim 30, Guedalia disclosed a method further comprising

transferring, into the local cache, all files held in the queue at once (column 10

lines 24-35, column 20 lines 8-19).

40.   Since all the limitations of the claimed invention were disclosed by the

combination of Mogul and Guedalia, claims 1, 15, and 21-30 are rejected.

41.   Claims 8-14 and 16-20 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Mogul (U.S. Patent Number 5,802,292) in view of Guedalia et

al. (U.S. Patent Number 6,535,878), hereinafter referred to as Guedalia, and

further in view of Schulhof et al. (U.S. Patent Number 5,557,541), hereinafter

referred as Schulhof.

42.   Regarding claim 8, Mogul disclosed a method for prequeuing of files

predicted to be desired by a user, comprising: defining a restrictive criteria to

select a list of files (Abstract, Figure 2, column 2 lines 22-44); transferring files on

the list into a local cache, in anticipation of a user selection thereof, files already

transferred to the local cached having a shorter delay for review than those which

have not been previously transferred to the local cache, an order of file transfer

being responsive to the prediction of user review requirements, the prediction

being responsive to any change in a user deviation from the predicted order

(Title, Abstract, Figures 1-2, column 1 lines 59-65, column 2 lines 7-16, column 4

lines 5-24); receiving a starting point within the list of files, for file review, from the

user, such that predicted latencies for sequential file review from any starting

point are optimized (Abstract, Figure 2, column 3 lines 54-57, column 4 lines 5-

24, lines 38-52). Guedalia disclosed a step of automatically transferring files on the list to the client storage media (Abstract, Figures 1-2, column 8 lines 23-33, column 9 lines 19-29).

43.   Mogul did not expressly disclose a method wherein predicted latencies are minimized. However, Schulhof disclosed an element wherein predicted latencies are minimized by queuing the records in a fast hard disk drive (column 10 lines 53-61).

44.   Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to employ a prequeuing system wherein the prequeuing system is responsive to any change in the sequence of user review, such that predicted latencies for sequential file review from any given starting point are minimized in order to provide user with seamless stream of digital content. Latencies in a multimedia digital content are usually unacceptable. Most users do not want to experience delay when they are trying to listen to music or to watch a video stream (Mogul, column 1 lines 32-39, lines 60-65).

45.   Regarding claim 9, Schulhof disclosed a method wherein the transferring of files is optimized based on both predicted latencies and a throughput of the connection between a source of the files being transferred and the local cache (column 9 lines 10-18, column 10 lines 57-61).

46.   Regarding claim 10, Schulhof disclosed a method wherein the transferring of files is optimized based on both predicted latencies and an apparent strategy for review of records by the user (column 10 lines 13-24).

47.   Regarding claim 11, Schulhof disclosed a method wherein the transferring

of files is optimized based on both predicted latencies and a cost of the record

downloads (column 10 lines 13-24, lines 41-44).

48.   Regarding claim 12, Schulhof disclosed a method wherein the transferring

of files is optimized based on both predicted latencies and a cost of on-line time

(column 9 lines 27-35, column 10 lines 11-24).

49.   Regarding claim 13, Schulhof disclosed a method wherein the transferring

of files is optimized based on both predicted latencies and a value of the user's

time (column 2 lines 13-28, column 8 lines 4-13, and column 9 lines 57-60).

50.   Regarding claim 14, Schulhof disclosed a method wherein the transferring

of files is optimized based on both predicted latencies and a burden on the server

(column 9 lines 54-60, column 11 lines 20-25).

51.   Regarding claim 16, Schulhof disclosed a browser further comprising an

accounting system for accounting for downloading of each object (column 6 lines

33-48).

52.   Regarding claims 17-19, the limitations of claims 17-20 correspond to the

limitations of claims 8-10, and 11, and thus these claims are rejected using the

same rationale.

53.   Regarding claim 20, Mogul and Schulhof combined disclose a browser

wherein the transferring of objects is optimized based on both predicted latencies

((column 10 lines 53-61) and a value of user's time (column 1 lines 32-44,

column 4 lines 13-24).

54.　　Since all the limitations of the claimed invention were disclosed by the combination of Mogul and Schulhof, claims 8-14 and 16-20 are rejected.

Response to Arguments

55.　　Applicants' arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

56.　　In response to applicant's argument that "Van Ryzin teaches that is playlist is already downloaded before a 'track' can be 'played'", the Office contends that Van Ryzin taught either downloading the *entire playlist or individual tracks* of the playlist before playing a track (See column 3 lines 66-column 4 line 3). In addition, Ryzin also disclosed "music CDs are now available over the Internet and tracks from such CDs may be added to the custom playlist to be played by audio/visual device."

57.　　In response to applicant's other arguments, these arguments have been addressed as detailed in the new ground(s) of rejection. Refer to the above rejections for complete details.

58.　　As the rejection reads, Examiner asserts that the combination of these teachings render the claimed invention obvious.

Conclusion

59.　　The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (703) 305-4665. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on 703-308-3873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William Cuchlinski
SPE
Art Unit 2144
703-308-3873